

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NGM INSURANCE COMPANY,

Plaintiff,

Docket No.: 07-CV-6517

-against-

**AFFIDAVIT OF
ROBERT D. COOK**

BLAKELY PUMPING, INC. d/b/a ASSENTIAL PUMPING,
BRIAN J. BLAKELY, PETER J. SLINGERLAND, NANCY
SLINGERLAND and PROGRESSIVE CASUALTY
INSURANCE COMPANY,

Defendants.

STATE OF NEW YORK)
.SS:
COUNTY OF ULMSTER)

ROBERT D. COOK, being duly sworn, deposes and says:

1. That he is an attorney with the law firm of Cook, Netter, Cloonan, Kurtz & Murphy, P.C., attorneys for the defendants, Blakely Pumping, Inc. d/b/a Assential Pumping and Brian J. Blakely, in the above-entitled action and as such he is familiar with the contents of the file and the facts and circumstances surrounding this action.
2. That this affidavit is submitted in opposition to plaintiff's motion for summary judgment seeking a declaration that its policy of insurance affords no coverage to the defendants, Blakely Pumping, Inc. d/b/a Assential Pumping and Brian J. Blakely.
3. That in January of 2006, NGM Insurance Company was aware that Brian J. Blakely was operating his 2004 Dodge pick-up truck on November 3, 2005 when he was involved in an accident with Peter J. Slingerland and at the time of the accident he was an employee of Blakely Pumping, Inc. d/b/a Assential Pumping and was operating his pick-up truck in the course of his employment with Blakely Pumping, Inc. and was named as a Vice President of Blakely Pumping, Inc. in its corporate books.

4. That NGM Insurance disclaimed coverage by letters dated February 1, 2006 and March 23, 2006 referring to Exclusion "g" in "Under the Business Owners Liability Coverage" form issued by NGM to Blakely Pumping, Inc.

5. That the policy of insurance issued to Blakely Pumping, Inc. d/b/a Assential Pumping by NGM effective July 13, 2005, contained an endorsement "Hired Auto and Non-Owned Auto Liability" deleting and replacing Exclusion "g".

6. NGM by letter dated August 4, 2006 disclaimed coverage for the first time pursuant to the "Hired Auto and Non-Owned Auto Liability" endorsement.

7. It is respectfully submitted that the purported disclaimers by letters dated February 1, 2006 and March 23, 2006 were invalid and that the disclaimer by letter dated August 4, 2006 was untimely in that there was a delay of over seven months from the time NGM was apprised of all the facts relevant to their disclaimer issued August 4, 2006.

WHEREFORE, the defendants, BLAKELY PUMPING, INC. d/b/a ASSENTIAL PUMPING and BRIAN J. BLAKELY, request that plaintiff's motion for summary judgment be denied.

ROBERT D. COOK

Sworn to before me this
10th day of April, 2008.

NOTARY PUBLIC